



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

**IN THE MATTER OF THE
COMPTROLLER OF THE CITY OF NEW
YORK'S INVESTIGATION OF**

**New York City Department of Social Services
and the Purchase of 17 Buildings**

SUBPOENA DUCES TECUM

**TO: Martha Calhoun
General Counsel
NYC Department of Social Services
150 Greenwich Street
New York, NY 10007**

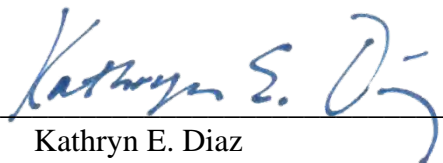
YOU ARE HEREBY COMMANDED, under Chapter 5, Section 93, of the Charter of the City of New York, to deliver and turn over to **SCOTT M. STRINGER**, Comptroller of the City of New York or a designated representative, on the **15th day of April 2019**, unless otherwise stated by this Office, or any other agreed-upon date or time, to **Julia Davis, Director of Research and Investigations**, Bureau of Audit & Investigation, Office of the Comptroller of the City of New York at One Centre Street, 11th floor New York, NY 10007, all Documents and information demanded in the **attached Schedule at Part C** in accordance with the instructions and definitions contained therein.

PLEASE TAKE NOTICE that the Comptroller of the City of New York deems the Documents and information demanded by this Subpoena to be relevant and material to an investigation undertaken in the public interest pursuant to Section 93 of the City Charter as they relate to, among other things, matters affecting the finances of the City and the receipt and expenditure of City funds.

PLEASE TAKE FURTHER NOTICE that your failure to comply with this subpoena may result in action being taken against you in the Supreme Court of the State of New York to compel compliance, and may subject you to penalties or other punishment as prescribed by law.

ALL INQUIRIES should be directed to Julia Davis at jdavis@comptroller.nyc.gov or (212) 669-3805.

WITNESS, the Honorable Scott M. Stringer, Comptroller of the City of New York, this 5th day of April, 2019.

By: 
Kathryn E. Diaz
General Counsel
Office of the Comptroller
of the City of New York

SCHEDULE

A. Definitions

1. The terms “and” and “or” mean “and/or.”
2. “Comptroller” means Comptroller Scott M. Stringer and the Office of the New York City Comptroller.
3. “Department of Social Services,” “DSS,” “you,” and “your” mean the New York City Department of Social Services as well as all of its municipal predecessors, successors, parents, subsidiaries, affiliates, members, associates, directors, officers, employees, partners, agents, attorneys, or accounts.
4. “Document” means every writing or record of whatever type and description in your possession, custody, or control on which information is recorded in any way whatsoever, including all handwritten, typed, printed, recorded, transcribed, taped, filmed, graphic- or sound-reproduction material, magnetic cards or cartridges, optical storage devices, and computer records, including, but not limited to, letters, emails, instant messages or other wireless pager messages, voicemail, memoranda, notes, reports, analyses, facsimiles, diaries, calendars, studies, logs, journals, books, notebooks, plans, records, forms, charts, graphs, audio, visual and digital recordings, photographs, slides, work-sheets, customer checks, contracts, product requests, product pricing sheets, invoices, receipts, bills of lading, credit card charge slips, computation sheets, computer printouts and programs, tapes, diskettes, CD-ROMs, microfilm, microfiche, and copies of Documents which are not identical duplications of the originals (e.g., because notes appear thereon or are attached thereto). A draft or non-identical copy is a separate Document within the meaning of this term.
5. “Concerning” or “relating to” means constituting, embodying, comprising, referring to, pertaining to, describing, in connection with, in support of, evidencing, or making a statement about.
6. “Entity” means any business, legal or government body, association, or corporation, as well as all subsidiaries, employees, agents, independent contractors, and assigns thereof.
7. “Person” means any Entity or natural person.

B. Instructions

1. If any Document requested herein was formerly in your possession, custody, or control and has been lost or destroyed, you shall submit a written statement that: (a) describes in detail the nature of the Document and its content; (b) identifies the Person who prepared the Document and its

contents; (c) identifies the Persons who have seen or had possession of the Document; (d) specifies the dates on which the Document was prepared, transmitted, and/or received; (e) specifies the dates on which the Document was lost or destroyed, states the conditions of and reasons for such destruction and the persons who requested and performed the destruction; and (f) identifies all Persons with knowledge of any portion of the contents of the Document.

2. Retrieve (including restoring backup media and archives) all deleted Documents.
3. Identify the Person(s) responsible for preparing the response to this Subpoena and submit a copy of all instructions prepared by you relating to the steps taken to respond to this Subpoena. Where oral instructions were given, provide a written statement under oath from the Person(s) who gave such instructions, detailing the content of the instructions and the Person(s) to whom the instructions were given.
4. For your response to this Subpoena to be complete, the attached statement under oath entitled “Verification” must be completed and executed by the Person supervising compliance with the Subpoena and submitted with the responsive Documents.
5. Unless otherwise directed and agreed to by Comptroller’s Office staff, you should produce Documents in electronic, native file format.
6. By separation into separate file folders or other enclosures, you are to identify the paragraph and subparagraph of Section C “Documents to be Produced” to which each document produced pursuant to this subpoena is responsive. You should sign and mark each folder or other enclosure with your name, the date of the subpoena, and the paragraph of the subpoena attachment to which the documents are responsive.
7. No document called for by this subpoena shall be destroyed, modified, redacted, removed, or otherwise made inaccessible, except insofar as documents are withheld under claim privilege in compliance with the instructions below.
8. Each page of each document produced in non-electronic format should be identified in the lower right-hand corner with your initials followed by a consecutive number, preferably marked in red or dark blue so that copies can be distinguished from original numbered documents—for example, [DSS 01234](#).
9. The singular form of a word is to be construed to include within its meaning the plural form of the word, and vice versa, and the use of any tense of any verb is to be considered to also include all other tenses, in a manner that gives this subpoena schedule the broadest reading.
10. If you withhold any document on the ground of any privilege, provide a statement setting forth:
 - a. the name and title of the author (and, if different, the preparer and signatory);

- b. the name and title of the person to whom the document was addressed;
- c. the names and titles of all persons to whom the document or a copy of the document was sent or to whom the document or a copy, or any part thereof, was shown;
- d. the date of the document;
- e. the number of pages;
- f. a brief description of the subject matter;
- g. the nature of the privilege claimed; and
- h. the paragraph of the schedule of documents to which it is responsive.

C. Documents to be Produced

1. Appraisals that the City of New York commissioned or reviewed that appraise or estimate the value of the 17 buildings that are being purchased or have been purchased for the purpose of converting cluster-site shelters/apartments into permanent affordable housing to be operated by non-profit organizations.
2. Documents concerning* appraisals that the City of New York commissioned or reviewed that appraise or estimate the value of the 17 buildings that are being purchased or have been purchased for the purpose of converting cluster-site shelters/apartments into permanent affordable housing to be operated by non-profit organizations.

The 17 subject buildings whose appraisals are demanded are those discussed in the attached correspondence: Comptroller Stringer to Commissioner Banks dated March 25, 2019, attached as Exhibit A; Commissioner Banks to Comptroller Stringer dated March 28, 2019, attached as Exhibit B; and Comptroller Stringer to Commissioner Banks dated April 1, 2019, attached as Exhibit C.

*See definitions of “documents” and “concerning” in Part A of Schedule, above.

Verification

This response to the Subpoena of the Comptroller of the City of New York, dated _____, 2019, including without limitation production of the requested Documents, was prepared and assembled under my personal supervision from the records of _____

_____ in accordance with the instructions and definitions set forth in such Subpoena and is complete and correct to the best of my knowledge and belief. The Documents produced in response to this Subpoena are authentic, genuine, and what they purport to be.

Printed Name:

Title:

Sworn to before me this
day of _____, 2019

Notary Public

EXHIBIT A



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

March 25, 2019

Dean Fuleihan
First Deputy Mayor
City Hall
New York, 10007

Re: Conversion of Cluster Sites into Affordable Housing

Dear First Deputy Mayor Fuleihan:

I am writing to express concern regarding recent reports that the City is about to purchase or finance the purchase of 17 buildings in Brooklyn and the Bronx to convert cluster site homeless shelters into affordable housing. Last week, the *Daily News* reported that the City would pay \$173 million for these buildings, although an earlier analysis of available records placed the cost between \$40 million and \$60 million.^[1]

Given the continuing need for affordable housing in New York City, I fully support your efforts to find creative ways to increase the supply and eliminate expensive and poorly-maintained cluster site shelters. In fact, the phasing out of the cluster site program is something I've long called for. However, as the City's chief financial officer, it is my responsibility to point out that the City cannot afford to take these actions at the expense of transparency and fiscal responsibility. I therefore respectfully request that you provide my office with the following information no later than April 5, 2019:

1. Please explain why the City is paying \$173 million for the sites, if that is correct, and please provide all appraisals undertaken for or received by the City in regard to these properties. Published reports in the *Daily News* and other outlets indicate an extraordinarily wide range of valuations that have been made for these buildings—from \$40 million to \$143 million—and suggest that discussions about the City's acquiring them have been ongoing for some time.
2. The *Daily News* article further notes that these properties have unrectified and outstanding building violations. Please provide any analysis performed to indicate the projected cost to complete the repairs, including but not limited to, any engineering reports and whether that cost will be paid by the City. How does the cost of repairs factor into the purchase price?

^[1] <https://www.nydailynews.com/news/politics/ny-metro-cluster-173-031419-story.html>

3. Please indicate the process the City will use to purchase these buildings, including which City agencies will be involved, who will purchase and own the buildings, any public approvals needed, and the sources of the funding.
4. What regulatory restrictions will be placed on the property after approvals are granted, including any income restrictions?
5. Given that the City reportedly has been paying the owners of these buildings for the cluster site apartments used as homeless shelters, please provide any cost-benefit analysis that the City has obtained comparing the City's costs in providing those apartments as shelter with the costs of turning them into permanent subsidized housing. Please include:
 - The number of apartments and sizes (by square feet and number of bedrooms) if those figures are not already included in the cost-benefit analysis and appraisals;
 - The net reduction in the number of cluster site shelter units that the City will accomplish through this purchase; and
 - The total cost to operate the current cluster site portfolio including the cost for repairs that have been completed to date.

I know that you and I share a commitment to maintaining a City that provides opportunity to all of our residents and that begins with providing every New Yorker with a reasonable opportunity to find permanent affordable housing. Thank you for your prompt attention to this issue, and I look forward to hearing from you soon.

Sincerely,



Scott M. Stringer
New York City Comptroller

EXHIBIT B



**Department of
Social Services**

Human Resources
Administration

Department of
Homeless Services

Steven Banks
Commissioner

**150 Greenwich Street
New York, NY 10007**

929 221 7315

W-1
Rev. 12/16

March 28, 2019

Hon. Scott M. Stringer
Comptroller
City of New York
1 Centre Street, 5th Floor
New York, New York 10007

Dear Comptroller Stringer:

I write in response to your letter dated March 25, 2019 to First Deputy Mayor Dean Fuleihan regarding the impending transaction to convert 17 cluster sites to permanent affordable housing owned and operated by trusted not-for-profit housing organizations to provide affordable permanent housing to 1,200 homeless children and adults in addition to 261 permanent tenant households in these properties. I am glad that we agree that the Giuliani-era cluster program, started nearly two decades ago, must be phased out and I appreciate your support for creative ways to produce more affordable housing for New Yorkers experiencing homelessness right now.

In January 2016, the City was paying for over 3,600 cluster apartments to shelter families with children experiencing homelessness. Today, we are using just over 1,800. This transaction will convert 468 cluster units, or 25% of the remaining cluster units, to permanent housing, thereby providing stable, affordable, permanent housing for 1,200 New Yorkers experiencing homelessness, including over 800 children. These families are excited to have this opportunity and over the past several months have been preparing for their chance at permanency. Furthermore, this transaction will bring 261 other units in these properties with permanent tenants into a long-term regulatory agreement, ensuring that they will continue to serve as housing resources for low-income New Yorkers.

Below please find answers to your specific questions in your letter.

As you know, the Mayor and I have indicated on several occasions that the City is prepared to use the tool of eminent domain to convert cluster sites to permanent affordable housing to alleviate homelessness. In this transaction the City is paying what we would likely have paid if we went through what could be at least three years to acquire the property through eminent domain, and several more years before a court would determine the value of the properties. Through this transaction, 1,200 children and adults are getting

permanent housing now rather than being in limbo while the City seeks to acquire the properties through eminent domain.

To determine what we should pay to provide permanent housing for these 1,200 homeless children and adults, the City has been guided by the standard used in an eminent domain court proceeding. Specifically:

- Under a basic principle of condemnation law, a court will determine the value of property based on its likely highest and best use, not necessarily its actual use.
- To evaluate the potential cost of the properties if they were to be acquired through eminent domain, the City's Law Department retained an independent reputable appraiser. The low values cited in the press did not use the eminent domain legal standard.
- The independent appraiser valued the properties at \$143.1 million.
- The purchase price took into account that if the properties were to be condemned, a court could order the City to pay a higher value as well as attorney and expert fees. In addition, the City would have to pay interest on any award, which would be substantial.

The City's policy is to not release appraisals. Appraisals contain information regarding the internal deliberations about how property is valued. Disclosure of appraisals would interfere with the City's future negotiations for property acquisitions.

What we are paying is also consistent with the current median price for a rent stabilized apartment. The median price for a rent stabilized unit in the Bronx is \$220,000 and in Brooklyn is \$280,000. We have 13 sites in the Bronx and 4 in Brooklyn and we are paying \$237,000 per unit. As your letter notes, we also plan to provide capital funding for rehabilitation costs. After this acquisition, these buildings will be treated like standard affordable housing preservation deals. When ownership changes hands, the Department of Housing Preservation and Development will work with the local, high quality, not-for-profit housing organizations who are taking over ownership and management of these buildings to determine the rehabilitation scope and develop a plan for financing.

Furthermore, in evaluating the rehabilitation costs in addition to the per unit purchase price, it is not comparable to juxtapose the purchase price plus the ultimate rehabilitation costs with the median purchase price. In comparable

sales that produce the median unit costs of \$220,000/\$280,000 a purchaser is taking the unit subject to rent stabilized tenants in place who have rent increase and tenure protections. In this transaction, absent the purchase, if we simply exited the cluster units, the property owner would be selling 17 properties with 468 vacant rent stabilized units – which the purchaser potentially could have effectively taken out of rent regulation by investing in major capital renovations. That would have put tremendous displacement pressure on the 261 non-cluster tenants in the buildings. This transaction is protecting those tenants as well and ensuring all 729 units within this portfolio remain rent stabilized for decades to come.

One of the reasons we have prioritized ending the cluster program is because the City had less control over building conditions within the cluster portfolio of sites than at our traditional shelters. Cluster buildings across the full portfolio carried substantial violations, including these properties. In the Fall of 2018, these properties carried over 400 HPD, Environmental Control Board, and Department of Buildings violations. In order to prepare these properties to become affordable housing, the seller's maintenance crews, overseen and supplemented by Department of Homeless Services maintenance crews, have been working to improve the condition of the homeless units. As part of this work, the seller has been forced to remedy a large portion of these violations. The remaining violations will be cleared by the new not-for-profit owners, either immediately or during the rehabilitation work. Further, as a condition of this transaction the seller must settle all fines associated with these properties with the Department of Finance.

To finance the purchase of these properties by high quality not-for-profits, the City is making loans to two not-for-profits using HPD's loan authority: Neighborhood Restore and JOE. While HPD is the lender in this transaction, in addition to HPD, the complete details of the project have been reviewed by the City Law Department, the Office of Management and Budget, the Department of Social Services, and the City's Housing Development Corporation.

The properties will be managed by seven local not-for-profits: Banana Kelly, Fordham Bedford, Fifth Avenue Committee, MHANY, Samaritan Village, HELP and Settlement Housing. At the time of construction closing — expected to be within the next 12-18 months — long-term ownership will also be transferred to these not-for-profits.

Given that one private entity is selling properties to other private entities, this transaction is not subject to ULURP or any other public process through the City Planning Department.

The properties in this portfolio will be heavily regulated. This transaction includes a 60-year regulatory agreement covering 100% of the 729 units. Through re-rentals, 50% of the units will be long-term homeless set asides and 50% will be long-term affordable units subsidized to 60% AMI (\$56,000 for a family of three). After 60 years, half the units will be permanently affordable. The homeless set aside units will be filled upon re-rental using the current HPD/DSS process and the affordable units will be leased through Housing Connect – HPD’s online Lottery System.

Finally, with respect to your questions about the cost of using these units as shelter:

- Over the past five fiscal years the Department of Social Services has paid just under \$50 million in rent to the current owners of these properties for use as cluster shelter through this Giuliani-era program.
- The below chart compares the cost of shelter for a homeless family with the cost of permanent housing for a single year and shows a cost benefit for permanent housing as compared to shelter costs. The City share of family shelter is shown with the State and federal funding contributions and what it would be with the impending 10% TANF cost shift to the City that is proposed to be included in the State budget.

	Total	City	State	Fed
Annual cost of FWC shelter unit @ current funding	\$70,117	\$25,242	\$4,908	\$39,966
Annual cost of FWC shelter unit w/ 10% TANF shift to City	\$70,117	\$29,449	\$4,908	\$35,759
Annual cost of a cluster converted to a housing unit	\$22,534	\$22,534	\$0	\$0
purchase price of unit (60-year deal)	\$3,950	\$3,950	\$0	\$0
social services	\$3,500	\$3,500	\$0	\$0
CFHEPS rent for 1 year (assumes \$300 client contribution)	\$15,084	\$15,084	\$0	\$0

- Reliable square footage for each unit is not available at this time. However, apartment bedroom counts for the 468 units currently in the homeless set aside portion of this portfolio are approximately:
 - 2 studios
 - 309 one-bedroom units
 - 107 two-bedroom units
 - 50 three-bedroom units

- DHS currently funds just over 1,800 cluster units, a 50% reduction from the height of the 19-year program. This conversion of units to permanent housing will reduce the current cluster portfolio by 25%.
- As you know, DHS has been shrinking the cluster portfolio. In Fiscal Year 17, DHS' total costs across the portfolio were \$65,185,322.64 and in Fiscal Year 18 they were \$57,855,373.47.

We are happy to brief you further on this transaction at your convenience. As always, please do not hesitate to reach out with any questions or concerns. Thank you for your focus on our clients and your support for providing affordable permanent housing to homeless children and adults.

Sincerely,

A handwritten signature in black ink, appearing to be 'Steven Banks', written over a light blue circular stamp.

Steven Banks
Commissioner
New York City Department of Social Services

EXHIBIT C



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

April 1, 2019

Steven Banks
Commissioner
New York City Department of Social Services
150 Greenwich Street, 40th Floor
New York, NY 10007

Dear Commissioner Banks:

Thank you for your March 28, 2019 response to my inquiry regarding the purchase of 17 buildings to be converted from cluster site shelters to affordable housing. I appreciate the progress that Department of Social Services (DSS) is making on closing cluster sites, a model that my office has long viewed as problematic. As we all agree, the City should not allow any of its residents, homeless or otherwise, to live in unsafe conditions. That said, your letter raises more questions than it answers as to how the purchase price for these particular properties was determined.

In your letter, you state that "the purchase price took into account that if the properties were condemned a court could order the City to pay a higher value as well as attorney and expert fees." However, this statement does not actually explain how the City determined that it would spend \$174 million instead of \$143.1 million, which was the independent appraiser's evaluation. The City should not have a policy of spending significantly more than the estimated value of the property simply because it is fearful that someone "could" make them pay more. Did the City lose faith in the independent appraisal or base the valuation on some other metric?

While you do indicate that you are paying approximately \$237,000 per unit, which you state is near the median price for a rent stabilized unit in the Bronx and Brooklyn, this is an imprecise and unreliable metric for valuation purposes. Appraisals, when done correctly, analyze comparable properties to determine their value. However, median value across a borough forgoes those *direct* comparables and includes many buildings that are not in fact comparable. To put it simply, a rent stabilized building purchased in Bay Ridge, Crown Heights, Park Slope and Brownsville will each likely have different comparables and purchase prices per unit despite sitting in the same borough. It is for this reason that appraisals are typically used, *not* median purchase price.

Further you state that "in evaluating the rehabilitation costs in addition to the per unit purchase price, it is not comparable to juxtapose the purchase price plus the ultimate rehabilitation costs with the median purchase price," claiming that absent the purchase, 468 units would be vacant and likely de-regulated. However, it appears that your underlying assumption here is faulty. Across the City, whether purchasing market rate units or rent stabilized units, developers consider the cost of rehabilitation to determine the capital improvements needed and the amount of financing necessary to achieve their financial goals for a building. The capital improvements needed, maintenance costs, and potential rental income are used to determine the purchase price by calculating the potential net

operating income. By only looking at potential rents, one is ignoring the other side of the equation necessary to determine if the purchase price was calculated correctly.

Moreover, without knowing the potential rehabilitation cost, the ultimate cost to the City for these projects cannot be known. While your letter indicates that these buildings had 400 violations issued by the Department of Housing Preservation and Development, the Environmental Control Board, and the Department of Buildings and that "the seller has been forced to remedy a large portion of these violations," it does not indicate how many violations presently exist, how much it will cost to repair and remove them, or if additional subsidies will be needed to repair these violations. The letter only indicates that the purchasers, two not-for-profits, will be responsible for rehabilitating the remaining violations. Any way it is analyzed, the cost of rehabilitation should be a factor in the City's calculations and decision making and should be transparently disclosed.

Your letter clearly acknowledges that it will be less expensive in the long run to run these buildings as affordable housing than cluster-site shelters and therefore, *at some point in time*, it will be in the City's financial interest to have purchased these properties. However, exactly when the City will end up saving money greatly depends on the amount of money the City ends up spending to rehabilitate these buildings.

It is therefore still an open question as to whether or not the City is spending its money wisely. Providing greater detail about the facts and analysis employed by the City to support its decisions will hopefully assuage that concern. I therefore ask again that you provide greater clarity on these matters and provide the appraisals I requested in my previous letter. I remind you that my office has the power to subpoena these documents if necessary.

I also want to take this opportunity to reiterate my previous calls that our City's homelessness and housing policies be merged. The City needs to provide a greater number of units to formerly homeless families, increase the subsidies to build extremely low and low-income housing units, and raise revenues through creative means such as a reform to the real property transfer tax and the mortgage recording tax. Converting cluster sites shelters into affordable housing could be an important part of the equation, but must take place as part of a larger plan to tackle homeless through the development of affordable housing.

As always, please feel free to contact me directly if you'd like to discuss any part of this inquiry.

Sincerely,



Scott M. Stringer
New York City Comptroller